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**Applied Surface Technology, Inc. and Metal Processor Union Local 16, I.U.A.P. & N.W., AFL-CIO. Case 13-CA-32730**

March 30, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

Upon a charge filed by the Union on August 18, 1994, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1994, against Applied Surface Technology, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 6, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On March 7, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 10, 1995, notified the Respondent that unless an answer were received by February 17, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Illinois corporation, with an office and place of business in

Chicago, Illinois, has been engaged in the application of paints to metal products. During the 12-month period ending October 31, 1994, the Respondent, in conducting its operations, derived gross revenues in excess of \$500,000, and provided services in excess of \$50,000 for Chicago Heights Steel, an enterprise within the State of Illinois which receives goods in excess of \$50,000 directly from entities located outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On or about August 3, 1994, the Respondent threatened employees that wages would be reduced due to the employees' union and protected activities, and thereby caused the termination of employees John Lawrence, Jesus Lopez, Milton Nunn, Antonio Pintor, Cecelia Ramirez, and Saul Romero.

The Respondent engaged in the conduct described above because the employees of the Respondent joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

**CONCLUSIONS OF LAW**

By threatening employees with reduced wages due to their union and protected activities, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By thereby causing the termination of employees John Lawrence, Jesus Lopez, Milton Nunn, Antonio Pintor, Cecelia Ramirez, and Saul Romero, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by causing the termination of employees John Lawrence, Jesus Lopez, Milton Nunn, Antonio Pintor, Cecelia Ramirez, and Saul Romero, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to

their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the employees' terminations, and to notify the discriminatees in writing that this has been done.

### ORDER

The National Labor Relations Board orders that the Respondent, Applied Surface Technology, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that their wages would be reduced due to the employees' union and protected activities.

(b) Causing the termination of or otherwise discriminating against any employee for their membership in or activities on behalf of the Metal Processor Union Local 16, I.U.A.P. & N.W., AFL-CIO, or any other labor organization.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer John Lawrence, Jesus Lopez, Milton Nunn, Antonio Pintor, Cecelia Ramirez, and Saul Romero immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, as set forth in the remedy section of this decision.

(b) Expunge from its files any and all references to the employees' terminations, and notify the discriminatees in writing that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of

the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 30, 1995

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William B. Gould IV, Chairman

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Charles I. Cohen, Member

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John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees that their wages would be reduced due to their union and protected activities.

WE WILL NOT cause the termination of or otherwise discriminate against any employee because of membership in or activities on behalf of the Metal Processor Union Local 16, I.U.A.P. & N.W., AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer John Lawrence, Jesus Lopez, Milton Nunn, Antonio Pintor, Cecelia Ramirez, and Saul Romero immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously en-

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

joyed, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL expunge from our files any and all references to the employees' terminations, and notify the discriminatees in writing that this has been done.

APPLIED SURFACE TECHNOLOGY, INC.